IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.3.2002

CORAM :

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR

Writ Petition No.14084 of 1995

T.R.V.Pandurangan .. Petitioner

-Vs-

1.Government of India
rep.by the Secretary
Ministry of Home Affairs
New Delhi.

2.The Under Secretary to the
Government of India,
Ministry of Home Affairs,
Freedom Fighters Pension,
Lok Nayak Bhavan,
New Delhi 110 003. .. Respondents

Petition under Article 226 of the Constitution of India praying for the issue of a writ of mandamus as stated therein.

For Petitioner : Mr.N.G.R.Prasad
For Respondents : Mr.R.Santhanam, A.C.G.S.C.

: O R D E R

The petitioner herein has a sad saga to tell. He took part in the freedom struggle in the year 1940. He claims that he was jailed and was placed in Bellary jail. On that count, he also started getting the pension as decided by the State of Tamil Nadu, treating him as a Swantantrata Sainik. There is a parallel scheme by the Central Government also. He, therefore, applied to that Government for being recognised as a freedom fighter and for the consequent pension. The Central Government, however did not grant him the pension on the ground that the proof given by him for the suffering was not sufficient. The proof then supplied before the Central Government was the certificate of co-prisoners namely M.Rajagopalan and M.S.Ayyamperumal. The Central Government took the view that such co-prisoners' certificate could not be said to be a valid document to grant the pension.

2. The petitioner, therefore, came before this Court and filed a writ petition in W.P.No.17902 of 1991. The said writ petition was disposed of by this Court on 20.12.1993. The observations of the learned Judges are rather telling. They are reproduced here under.

"Heard the learned counsel appearing on either side. The ratio of our decision in W.P.No.7194/91 [R.Thangavelu v. Government of India by Secretary, Ministry of Home Affairs (Freedom Fighters Division), Lok Nayak Bhavan and another] dated 16.12.1993 squarely applies to the present case also."

The learned Judges, as their Lordships then were, consequently set aside the order and issued a direction in Para 4 of the judgment, which is as under:

"As and when the claim is sustained by the authorities pursuant to our orders and the reconsideration directed, the petitioners shall be entitled to the pension under the Central Scheme with effect from 10.3 .1982. No costs."

3. In the instant judgment of "Thangavelu v. The Government of India" cited supra, the Division Bench of this Court has observed in Para 38 that in the absence of the official record and if the said official record of the jail was not available, the certificate of the coprisoner regarding the incarceration of that person in the jail, as also the period of incarceration should be a good proof in support of his claim of being a freedom fighter. The learned Judges pointed out that in number of cases, the records were either destroyed or not traceable from the jails as also sometimes from the other departments. The learned Judges, therefore, directed that if the co-prisoner's certificate is found to be genuine, then such would be a good proof for the Central Government to act and to grant the pension thereupon. There was no change of law, at least not shown to me and, therefore, one thing was clear that the Division Bench had virtually allowed the petition because it was obvious that the Central Government had rejected the earlier application only on the ground that the co-prisoners' certificate could not be a valid proof in respect of the claim of being a freedom fighter.

4. In the order of the Central Government rejecting the earlier application of the petitioner, in Para 1 the Central Government said that no proof was produced from the official records regarding the claim of the imprisonment between 5.12.1940 to 6.6.1941. Secondly, it was stated that the co-prisoner's certificate furnished was not acceptable as evidence as he was not the petitioner's co-prisoner for six months in Alipuram Camp Jail. I was also taken through the said coprisoner's certificate which was furnished by the petitioner. It is issued by one M.Rajagopalan, Ex.M.L.C. It is claimed therein that the said Rajagopalan had suffered imprisonment in Alipuram Bellary District during the period of 19.10.1940 to 12.12.1941. It then goes to record that T.R.V.Pandurangan, S/o.Thiru Vadivelu Mudaliar, resident of Puthur, Pathathampatti Post, Harur Taluk, Dharmapuri District, was also

imprisoned on account of his participation in the Satyagraha movement held in 1940-41 and was lodged in the same jail along with him for the period from 5.12.1940 to 6.6.1941. Now, it is obvious that the Division Bench had looked into all these certificates and then had virtually allowed the petition. However, the Division Bench did not direct the grant of freedom fighter pension itself, but directed the Central Government to grant the same.

5. Unfortunately, again the same order came to be passed by the Central Government on 11.3.1994. Now, the Central Government says that the petitioner had not produced any documentary evidence in support of the sufferings claimed and had also not produced a certificate of non availability of the records from the concerned authority. It then goes on to suggest that since the relevant records were stated to be untraceable, the petitioner should check with the concerned jail authority whether the same have since been traced out. It is then expressed that it was not clear as to how long Shri M.Rajagopalan was with the petitioner in Alipuram Camp Jail.

6. Mr.N.G.R.Prasad, the learned counsel for the petitioner points out that in the wake of the earlier Division Bench order, there was no question of any consideration because the Division Bench had specifically accepted the factual position and had virtually directed the grant of freedom fighter's pension. However, it did not function as an Executive and directed the Government to do that. Mr.Prasad pointed out that Para 38 in Thangavelu's case cited supra is clear enough to show that a co-prisoner's certificate was a good proof. He also pointed out further that the certificate itself was more clear inasmuch as, the said M.Rajagopalan was a prisoner in the said prison for the period from 19.10.1940 to 12.12.1941 i.e., for a period of about one year and two months, and that the petitioner was a prisoner between 5 .12.1940 to 6.6.1941, that is also for a period of about seven months. He pointed out that the order passed by the Central Government is a classic example of non application of mind; that the concerned authority should have expressed doubt and should have expressed that it was not clear to it as to how long that Mr.Rajagopalan was with the petitioner in Alipuram Camp Jail.

7. The learned counsel appearing on behalf of the Central Government, however, tried to support the order saying that after the earlier writ petition was allowed by this Court, they did not receive anything from the petitioner though he claims that he had sent the certificates to them. I was taken through the counter affidavit which specifically suggests in Para 7 thereof that in a query made by the Central Government itself, it was clarified that the records in Bellary Jail were not traceable. This query was made at the instance of the Central Government by the State Government, which later on informed regarding the answer given by the Jail authorities concerning the non availability of the records. From this, the learned counsel suggested that if clear proof is provided by the petitioner and the claim is found to be genuine, the Central Government is even now prepared to grant the

pension.

8. One wonders at the attitude of the Central Government. The judgment of Justice A.R.Lakshmanan, as his Lordship then was, in Thangavelu's case was more than clear. In Thangavelu's case, it was decided in no uncertain terms that the genuine certificate by a co-prisoner would be a good proof regarding the claim of the factum of incarceration as also the duration thereof. Now, if this was so, there was no question of going into the question of genuineness or correctness of the certificate given by Mr.M.Rajagopalan. In its order now passed, the Central Government seems to have given the petitioner the unsolicited advice of going to the jail authority. It is also expressed its doubt in the following terms:-

"It is not clear to us as to how long Shri M.Rajagopalan, the certifier in your case was with you in Alipuram Camp Jail."

According to me, both paragraphs a) and b) in Para 2 are the classic example of non application of mind on the part of the Central Government, tending even to be contemptuous. The judgment of the Division Bench was clear that the ratio in Thangavelu's case squarely applied to the present case. According to the said ratio, the co-prisoner's genuine certificate was good enough. However, there was no doubt expressed on the genuineness or correctness thereof. Under such circumstances, one fails to know as to how the Central Government proceeded to give the unsolicited advice to the petitioner to go and trace the records himself as if it was his duty and task.

9. Secondly, one fails to understand as to how the concerned authority failed to note that the period of 5.12.1940 to 6.6.1941, which was claimed by the petitioner, comes within the period of 19.10.1940 to 12.12.1941, for which period the said M.Rajagopalan was in jail. Therefore, there was no question of anything not being clear for the officer unless the officer chose not to read the dates carefully. I express my deep consternation at such an attitude. After all, the petitioner had done something for the country and suffered. His claim was, therefore, liable to be considered in a very serious manner and not in a laconic manner as it has been done. Again, there was a judgment which had become final, of this Court, which had virtually allowed the petition.

10. In the wake of all these, one fails to understand the attitude of the Central Government. It has to be, therefore, concluded that the order is patently incorrect. The Central Government is, therefore, directed to grant the pension with effect from 10.3.1982 accepting the claim of the petitioner. The Central Government shall pay 12% interest on the arrears. The order shall be complied with within three months from today. This course was adopted by the Supreme Court in " Gurdial Singh v. Union of India and Others" reported in 2001 (8) S.C.C.8, wherein the situation was more or less the same. The writ petition is disposed of in the light of the above observations, however,

the Central Government shall pay the costs of Rs.5,000/-.

15.3.2002
Index : Yes/No
Website : Yes/No

kst.

To:

1.The Secretary to Government of India
Ministry of Home Affairs
New Delhi.

2.The Under Secretary to the
Government of India,
Ministry of Home Affairs,
Freedom Fighters Pension,
Lok Nayak Bhavan,
New Delhi 110 003.

V.S.SIRPURKAR, J.
W.P.No.14084/1995
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